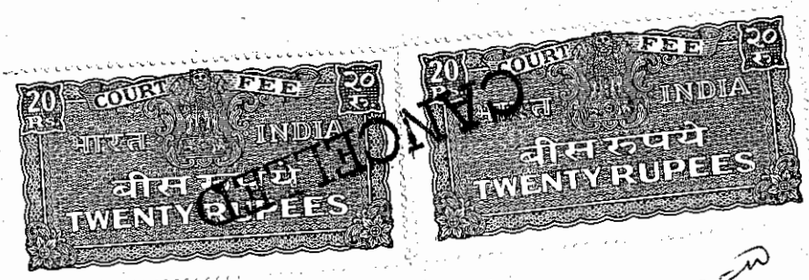

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1072/2001

Jai Kumar Agrawal son of Shri Lakhanlal Agrawal, aged about 65 years, resident of Village Chediya, Post Balodi, Tahsil-Balari, District Raipur. ..Petitioner

Vs.

P. R. No. 1039/ser
Presented by Shri D.S. Tenyar
dated 9.2.06 Sem

The Municipal Corporation Through the Commissioner, Durg. ..Respondent

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSITITUTION OF INDIA

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.1072 OF 2001

Jai Kumar Agrawal

versus

The Municipal Corporation through the Commissioner, Durg

ORDER

Post for 30 -11-2006

Sd/-
Satish K. Agnihotri
Judge

29-11-2006

(98)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.1072 OF 2001

Petitioner	:	Jai Kumar Agrawal
	versus	
Respondent	:	The Municipal Corporation through the Commissioner, Durg

Present : Mr. Ravindra Agrawal, counsel for the petitioner.
Ms. Sharmila Singhai, counsel for the respondent.

ORDER

(Passed on 30th of November, 2006)

The petitioner, in the present petition filed under Articles 226/227 of the Constitution of India, impugns the order dated 28-2-2001 (Annexure P-7), whereby the petitioner was punished with the penalty of withholding balance payment of the salary during suspension period and declaring the suspension period as non-qualifying service and further directing to adjust a sum of Rs.5,009.11, the embezzled amount with the pension and gratuity. The petitioner has further sought a direction to refix pension of the petitioner after grant of full salary of regular employee from the date of suspension, i.e., 27-11-1980 till his retirement, i.e., 30-11-1993 with interest.

2. The indisputable facts in brief are that the petitioner was employed as Moharrir in the respondent – Municipal Corporation, Durg. The petitioner was placed under suspension by order dated 27-11-1980 (Annexure P-1) on the ground of misappropriation of fund to the tune of Rs.5,009.11 after making recovery of taxes by not depositing the same with the Municipal Corporation.

3. A criminal case, being Criminal Case No.2667 of 1992, was also registered against the petitioner for an offence punishable under Section 408 of the Indian Penal Code. The criminal case resulted into acquittal of the petitioner on the ground that the prosecution failed to prove the case without considering deposition of the accused, vide judgment and order dated 9-5-2000 (Annexure P-2) passed by Chief Judicial Magistrate, Durg. During pendency of the criminal trial, the departmental enquiry could not proceed and the petitioner retired from service on attaining the age of superannuation on 8-11-1993.

4. Immediately after suspension, the petitioner was issued a show cause notice on 8-2-1981 with a charge-sheet, memorandum of charges, list of witnesses and list of documents. The petitioner sought for 15 days more time to submit his response to the charge-sheet, which was received on 7-3-1981, vide his letter dated 12-3-1981 (Annexure R-4). Before show cause notice along with charge-sheet was issued, the petitioner, on his own, by letter dated 25-11-1980 (Annexure R-2), admitted his guilt clearly stating that the petitioner had collected a sum of Rs.4925.11 as taxes from Ward No.6 and Ward No.21 and the receipts thereof were issued to the tax payers. The

(100)

petitioner further submitted that he had further collected a sum of Rs.84/- on 25-11-1980 and a receipt thereof was issued. The petitioner could not deposit the amount as his daughter fell sick all of a sudden. The petitioner sought for time till 5 P.M. to deposit the said amount. The petitioner has not deposited the said amount till date, as admitted by the petitioner, in the course of argument by learned counsel. After conclusion of the criminal case, the petitioner was served second notice dated 15-1-2001 (Annexure P-5) as to why following punishments under Rule 19(1) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (henceforth 'the Rules of 1966') should not be imposed on him :-

> "1. निलंबन अवधि को अकार्य दिवस (Non-Qualifying Service) माना जावेगा ।
>
> 2. निलंबन अवधि का रोका गया वेतन राजसात किया जावेगा ।
>
> 3. प्रभक्षण राशि 5009.11 पैसे उपादान एवं पेंशन की राशि से वसूली की जावेगी ।"

5. The petitioner submitted his detailed reply on 5-2-2001 (Annexure P-6) clearly stating that the petitioner was acquitted in the criminal case and even after the petitioner had admitted his guilt, the petitioner ought to have been given opportunity to put-forward his case in the enquiry. The petitioner had further stated that in the order passed by the Criminal Court, it was not held that the petitioner had collected a sum of Rs.5,009.11 as taxes and as such the petitioner was

not liable to pay the amount of tax collection by him. The petitioner sought for all the consequential relief also.

6. The Commissioner of the Municipal Corporation, Durg, after having considered all the facts, letter of the petitioner dated 25-11-1980 (Annexure R-2), wherein he had admitted collection of the amount to the extent of Rs.5,009.11, issue of receipts thereof and misappropriating the same, imposed the penalty by order dated 28-2-2001 (Annexure P-7) as under : -

"// कार्यालय नगर पालिक निगम, दुर्ग //

:: आदेश ::

कमांक/676/स्था./2001 दुर्ग, दिनांक 28/2/2001

प्रति,

श्री जय कुमार अग्रवाल
सेवा निवृत मोहर्रिर
ग्राम छेड़िया पो. बेलांदी
तहसील पलारी जिला रायपुर

विषय :– विभागीय जांच उपरांत कार्यवाही ।

कार्यालय के आदेश कमांक सा.प्र./1/80/2112 दुर्ग, दिनांक 27 नवम्बर 80 के द्वारा नगर पालिका की नियमित करो की वसूली की गई राशि 5009.11 पैसे विधिवत रसीद जारी करने के पश्चात नगर पालिका कोष में जमा न कर उनका प्रभक्षण किये जाने के कारण तत्काल प्रभाव से निलंबित किया गया ।

माननीय मुख्य न्यायिक मजिस्ट्रेट दुर्ग द्वारा अपराधिक प्रकरण क. 2667/92 में पारित निर्णय दिनांक 9.5.2000 द्वारा आपके विरूद्ध आरोपित अपराध प्रमाणित नहीं होने के कारण भा.द.स. की धारा 408 के आरोप से दोष मुक्त किया गया है ।

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चूंकि प्रकरण में निगम निधि का प्रभक्षण हुआ है । इसलिये कार्यालय के आदेश कमांक/88/स्था./2000 दिनांक 5.9.2000 के द्वारा विभागीय जांच हेतु श्री गुलाम शाबिर सहायक राजस्व अधिकारी को जांचकर्ता अधिकारी नियुक्त किया गया ।

जांच अधिकारी के जांच प्रतिवेदन दिनांक 19.12.2000 के अनुसार आपके द्वारा प्रभक्षण किया जाना प्रमाणित होना पाया गया तथा आपने भी दिनांक 25.11.80 को आवेदन प्रस्तुत कर राशि जमा करने हेतु दिनांक 26.11.80 तक समय की मांग किये है. परन्तु आपने वर्तमान तक राशि जमा नहीं किये है ।

अतः आपके द्वारा प्रस्तुत अभ्यावेदन दिनांक 5.2.2001 आमान्य किया जाता है एवं म.प्र. सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम, 1966 के नियम 19(1) के अनुसार निम्नांकित शास्ति अधिरोपित किया जाता है ।

1. निलंबित अवधि को अकार्य दिवस माना जाता है ।
2. निलंबन अवधि में रोका गया वेतन राजसात किया जाता है ।
3. प्रभक्षण राशि 5009.11 पैसे की वसूली उनको मिलने वाली पेंशन एवं उपादान से वसूली की जावेगी ।

हस्ताक्षर/–
आयुक्त,
नगर पालिक निगम, दुर्ग."

7. The petitioner has impugned the said order dated 28-2-2001 (Annexure P-7) imposing the penalty as above stated.

8. I have heard Mr. Ravindra Agrawal, learned counsel for the petitioner and Ms. Sharmila Singhai, learned counsel for the respondent and perused the records.

9. The main contention of the petitioner is that the petitioner was not given show cause notice before proposed punishment was imposed and the petitioner has received show cause notice after the imposition of punishment was proposed. This tantamounts to violation of principles of natural justice and fair play in action.

10. The submission of learned counsel for the petitioner is factually incorrect. The petitioner was served a show cause notice along with charge-sheet way back on 8-2-1981 and the petitioner thereafter sought for two weeks' time to file his reply. Before that, the petitioner, vide his letter dated 25-11-1980 (Annexure R-2), admitted his guilt stating that he had collected a sum of Rs.5009.11 from the tax payers and did not deposit the same with the respondent – Council/Corporation. The petitioner had sought for time to deposit the said amount by 5 P.M. The said amount has not been deposited by the petitioner till date. After conclusion of the criminal trial, where the petitioner was acquitted, a second show cause notice dated 15-1-2001 (Annexure P-5), proposing punishment, was served on the petitioner. The petitioner submitted a detailed reply on 5-2-2001 (Annexure P-6). The impugned order dated 28-2-2001 (Annexure P-7) was passed after having considered reply of the petitioner and letter dated 25-11-1980 (Annexure R-2), wherein the petitioner had clearly admitted his guilt of collection of the amount to the extent of Rs.5,009.11, issue of receipts to the tax payers and not depositing the said amount with the respondent – Council/Corporation.

11. Thus, the contention of the petitioner deserves to be rejected that no opportunity of hearing was afforded to the petitioner before imposing the punishment.

12. With regard to holding a departmental enquiry in case of admission, a Constitutional Bench of the Supreme Court in ***Jagdish Prasad Saxena*** **vs.** ***The State of Madhya Bharat (now Madhya Pradesh)***[1] observed that if the statements made by the appellant do not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry would certainly constitute a serious infirmity in the order of dismissal passed against him.

13. The Supreme Court in ***D.K.Yadav*** **vs.** ***J.M.A. Industries Ltd.***[2] observed that –

> "8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person."

14. Further, in the case of ***Viveka Nand Sethi*** **vs.** ***Chairman, J & K Bank Ltd. and others***[3], the Supreme Court, while considering the applicability of the principles of natural justice, held as under :-

> "22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See *Gurjeewan Garewal (Dr.)* v. *Dr. Sumitra Dash*[3].] The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. (See *State of Punjab* v. *Jagir Singh*[4] and *Karnataka SRTC* v. *S.G.Kotturappa*[5].)."

15. In the case on hand, having regard to the facts that the petitioner has admitted his guilt in clear and unambiguous terms and the petitioner was served show cause notices before imposition of punishment, no detailed formal enquiry was necessary, as laid down by the Supreme Court in various cases.

16. The contention of the petitioner that the petitioner has been acquitted in the criminal case for the same offence, i.e., criminal breach of trust by clerk or servant punishable under Section 408 of the Indian Penal Code, the department ought not to have proceeded against the petitioner for the same facts by imposing the above-stated punishment, deserves to be rejected. The factors for proceeding in a criminal case and proceeding departmentally are entirely different. In

the departmental proceedings, other facts may be many, such as enforcement of discipline, or to investigate level of integrity of delinquent or other staff.

17. The Supreme Court in ***Capt. M. Paul Anthony*** vs. ***Bharat Gold Mines Ltd. and another***[4] observed as under :-

> "13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the

proceedings is common without there being a variance."

18. Subsequently, in the case of ***G.M.Tank*** **vs.** ***State of Gujarat and others***[5], the Supreme Court held that in case the departmental proceedings and the criminal case are based on the identical and similar set of facts and the charge in a departmental case against the delinquent and the charge before the criminal Court are one and the same, the delinquent should succeed in the departmental proceedings.

19. In the present case, the facts produced before the criminal Court were not identical and similar as the petitioner was not examined before the criminal Court and even the letter dated 25-11-1980 (Annexure R-2), wherein the petitioner has categorically and unambiguously admitted his guilt, was also not produced and examined in the criminal Court. Thus, the petitioner cannot succeed on the ground that the facts before the criminal Court were identical and similar.

20. With regard to scope of judicial review in case of the imposition of punishment, the Supreme Court, in the case of ***V. Ramana*** **vs.** ***A.P. SRTC and others***[6], after having considered the dicta laid down in the case of ***B.C. Chaturvedi*** **vs.** ***Union of India***[7], ***Union of India*** **vs.** ***G. Ganayutham***[8] and other cases, observed in para 11, as under :-

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case[4] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

21. As a result, for the reasons made hereinabove, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

30-11-2006

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1 AIR 1961 SC 1070
2 (1993) 3 SCC 259
3 (2005) 5 SCC 337
4 (1999) 3 SCC 679
5 (2006) 5 SCC 446
6 (2005) 7 SCC 338
7 (1995) 6 SCC 749
8 (1997) 7 SCC 463

Gopal